

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:08-CR-28-D

UNITED STATES OF AMERICA :
 :
 v. :
 :
 JULIAN AVILEZ :

FINAL ORDER OF FORFEITURE

WHEREAS, on March 27, 2009, this Court entered a Preliminary Order of Forfeiture pursuant to the provisions of 21 U.S.C. § 853 and 18 U.S.C. § 982, based upon the defendant pleading guilty to 18 U.S.C. § 846, and agreeing to the forfeiture of the property listed in the March 27, 2009 Preliminary Order of Forfeiture, to wit:

(a) The real property and all appurtenances located at Lot 18, Phase II Creel Village (described in a deed recorded in Book 1604, pages 352-354 of the Sampson County Register of Deeds); and

(b) The real property and all appurtenances located at 202 Clinton Street, Newton Grove, North Carolina (described in a deed recorded in Book 1688, pages 411-413 of the Sampson County Register of Deeds); and

WHEREAS, on September 3, 2010 a joint petition for relief from the Final Order of Forfeiture was filed by petitioners, Soledad Lopez De Avilez and Mateo Avilez Duarte, a joint petition having previously been filed on July 22, 2009 by these petitioners and Don Cecil Hinson; and

WHEREAS, on October 16, 2010, this Court set aside the January 19, 2010 Final Order of Forfeiture to allow for discovery to be conducted as to this forfeiture matter; and

WHEREAS, on November 24, 2010, the plaintiff served all petitioners with its first set of interrogatories and request for production of documents pursuant to Fed. R. Civ. P. 33 and 34. At some time thereafter, incomplete responses to the discovery were made. Given the incomplete responses, the Government filed a motion to compel on May 2, 2011 asking that the petitioners be required to supplement their responses within 20 days. No response was filed.

On June 2, 2011 the Court entered an order granting the Government's motion to compel, allowing the petitioners the 20 days requested by the Government to supplement their responses. The Court clearly warned the petitioners that a failure to supplement their responses "could result in the imposition of sanctions, including the possible dismissal of their claims;" and

WHEREAS, the United States published notice of this forfeiture at the www.forfeiture.gov web site for at least 30 consecutive days, between June 25, 2009 and July 24, 2009, as required by Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty of Maritime Claims and Asset Forfeiture Actions. Said published notice advised all third parties of their right to

petition the court within sixty (60) days from the first day of the publication date for a hearing to adjudicate the validity of their alleged legal interest in the forfeited property; and

WHEREAS, it appears from the record that no other claims, contested or otherwise, have been filed for the property described in this Court's March 27, 2009 Preliminary Order of Forfeiture, other than those specifically mentioned herein; and

It is HEREBY ORDERED, ADJUDGED and DECREED:

1. As the petitioners, Soledad Lopez De Avilez, Mateo Avilez Duarte, and Don Cecil Hinson, have failed to respond to discovery as required by the Court's Order or provide any reason for such failure to respond, in accordance with Fed. R. Civ. P. 37(b)(2)(A)(vii) and Fed. R. Crim. P. 32.2(c)(1)(A) & (B), it is hereby ORDERED that their joint petition filed on July 22, 2009 is dismissed as a sanction for their failure to obey the Court's Order.


2. That the property listed in the March 27, 2009 Preliminary Order of Forfeiture is hereby forfeited to the United States. That the United States Department of Justice is directed to dispose of the property according to law.

3. That any and all forfeited funds shall be deposited by the United States Department of Justice as soon as located or recovered into the Department of Justice's Assets

Forfeiture Fund in accordance with 28 U.S.C. § 524(c) and
21 U.S.C. § 881(e).

The Clerk is hereby directed to send copies of this
Order to all counsel of record.

SO ORDERED this 28 of day July, 2011.



JAMES C. DEVER, III
UNITED STATES DISTRICT JUDGE